IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4542 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KASHIBEN HANSRAJ BHANABHAI

Versus

GEB

Appearance:

Mr Ketan Shah for MR MK VAKHARIA for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/02/2001

ORAL JUDGEMENT

This is an appeal under section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 21.4.1999 recorded by the learned Civil Judge (SD), Amreli, in Special Civil Suit No.24/97 under which the

learned trial Judge was pleased to award decree in favour of the respondents and against the appellant in a sum of Rs.98,024-93 with running interest at 12% per annum from the date of suit till the date of realization. The Learned trial Judge further directed that the parties of the proceedings to bear their own costs in the suit.

2. The respondent above named preferred the above said Civil Suit for the recovery of Rs.91,214-24 paise for the alleged consumption of electricity supply by the appellant above named showing 16073 units of 171 days. The respondent also contended that the aforesaid amount was calculated by adopting the formula of A,B,C,D. It was further contended that the appellant has not paid the said bill and, therefore, he was served with legal notice on 15.4.96 and the appellant was informed to pay the same within stipulated period. The respondent further contended before the trial court that since the notice was duly served upon the appellant and since the appellant did not pay the full amount, the appellant was liable to pay the amount with running interest and costs of the suit. The appellant above named was duly served with the summons. She filed written statement at Exh.24. It was mainly contended that she had not committed any theft of the electricity when the officers of the Board checked the spot and at that time she was not present there and in her absence the checking was made by the defendant which is illegal and hence she is not liable to pay any bill amount, she, therefore, prayed for dismissal of the suit.

3. The trial court, after appreciating the evidence and after providing opportunity to the parties, found that the respondents have proved that the appellant has illegally consumed electricity supply and, therefore, she was duty-bound to pay the bill amount in question, to the respondent. Accordingly, the learned trial Judge passed a decree in favour of the respondents and against the present appellant. Being aggrieved by the said judgment and decree passed by the learned trial Judge, the appellant has filed this appeal before this court. It has been contended here by the learned Advocate for the appellant that the son of the appellant was managing the whole affairs of the operation of the suit land. That the respondent had filed criminal complaint in respect of the very same theft against one Vinubhai Hansrajbhai at the time of checking. In the said complaint, the appellant is not at all a party and therefore, the theft cannot be said to have been committed by her and, therefore, neither her son nor she will be responsible to answer the claim of the respondents.

4. It appears that the land in question essentially stood in the name of the deceased husband of the present appellant. It, therefore, cannot be said that the trial court has committed any illegality in awarding the decree holding that the appellant-widow has committed theft of electricity. It is not the case of the present appellant that she was not in possession of the suit land and the electricity was not consumed illegally at any point to time for her benefit. The trial court has recorded evidence and after appreciation of evidence, the trial court has come to the decision that the appellant was responsible to answer the claim of the respondent. It is to be observed here that the trial court has taken into consideration the evidence produced by the appellant before the trial court at Exh.46 and, there, the appellant herself stated that the suit land is running in her name after the death of her husband and her son named Vinubhai is managing the whole affairs of the appellant. This shows that the appellant was successor in title of her husband in respect of the suit land. Since the title of the suit land is also in her name, naturally she was duty bound to pay for the electricity supply consumed by her in respect of the said land. It is true that the criminal complaint may have been filed against the son. There, the matters related to criminal liability. Her liability in Civil Suit is restricted to civil liability. When the land stands in the name of the appellant, it is not open to her to say that not the appellant but the son was responsible to pay the bill. In that view of the matter, in my view, no illegality has been committed by the trial court in passing the decree against the appellant. In other words, the judgment and decree of the trial court are not shown to be illegal and erroneous and, therefore, they cannot be set aside.

5. The net result is there is no merit in this appeal, and it is required to be dismissed at the admission stage. Having regard to the facts and circumstances of the case and having regard to the arguments of the learned Advocates, it is clear that there is no merit in this appeal and the same is required to be dismissed.

6. In the result, this appeal is ordered to be dismissed at the admission stage. The judgment and decree passed by the trial court are confirmed. Notice stands discharged. No order as to costs.

7. At this stage, learned Advocate for the appellant requests that the appellant may be allowed to pay the

aforesaid decretal amount by instalment. Since the decree has already been passed, it will not be possible for this court to consider the said request in this appeal in absence of defence in written statement or issue. However, it is made clear that if any such request is made by the appellant to the respondent for payment of decretal amount by instalment, then the respondents shall consider such a proposal/request of the appellant and shall decide the matter accordingly.

19.2.2001 [D P Buch, J.]
msp